

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:16-00227-01

MARK STEVEN BUSH, JR.
also known as “Unc”

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Mark Steven Bush, Jr.’s pro se Motion to Correct Presentence Investigation Report. ECF No. 454.

In the Motion, Defendant asks the Court to correct his presentence report under Rule 36 of the Federal Rules of Criminal Procedure and remove a pending charge dated March 12, 2015, that he did not commit. *See e.g.*, Def.’s Mot. However, as the Fourth Circuit has noted, “Rule 36 motions, however, apply only to clerical errors and are not the proper vehicle for challenging the substance of the information in a presentence report; such challenges must be filed within 14 days of receiving the report.” *United States v. Kubinski*, 707 F. App’x 195 (4th Cir. 2017) (memorandum opinion) (citing Fed. R. Crim. P. 32(f)).

Moreover, to the extent that Defendant contends that the information is incorrect,¹ and is affecting his Bureau of Prisons (“BOP”) custody classification status, his remedy is to file an administrative grievance with the BOP, as they determine security classification. *See* 18 U.S.C. 3621(b); Policy Statement 5100.08.

¹ Defendant claims that the state criminal complaint regarding the pending charge clearly lists his father’s date of birth, but the copy he attached for the Court’s review does not contain the date of birth information. *See* Ex. B, ECF No. 454.

As a final matter, the Court notes that to the extent that Defendant contends that his federal sentence must be vacated and a rehearing conducted, this claim has no merit because the pending charge played no role in the Court's imposition of sentence. *See* Tr. of Sentencing, ECF No. 207. For the reasons herein, the Motion is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel and the defendant, the United States Attorney's Office, the United States Probation Office, and the United States Marshals Service.

ENTER: May 19, 2022

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE